

09/09/2005

15:18

GEM GROUP → 5711253

NO.363 0002

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Martha Jane Toy, individually, and as Executrix and
Personal Representative of the Estate of Russell B. Toy,
deceased,

Plaintiffs,

v.

Plumbers & Pipefitters Local Union No. 74 Pension Plan,
Trustees of Plumbers & Pipefitters Local Union No. 74
Pension Plan, Health and Welfare Plan, Local 74, Welfare
Benefit Plan, Life Insurance Plan, Local 74, Welfare
Benefit Plan, Life Insurance Plan, Local 74, Insurance
Plan, Administrators of Pension and Welfare Plans,
Trustees of Plumbers & Pipefitters Local Union No. 74
Welfare Plan, Plan Administrator of Pension & Welfare
Plans, Insurance Plans, and Health and Welfare Benefit
Plan,

Defendants.

C.A. No. 05-cv-1814

AFFIDAVIT OF SCOTT A. ERNSBERGER

STATE OF DELAWARE)
) ss:
COUNTY OF NEW CASTLE)

The undersigned, being duly sworn according to law, does hereby depose
and say:

1. I am employed by GEMGroup LP ("GEMGroup") whose office is
located at the Brandywine Corporate Center, 650 Naamans Road, Suite 303, Claymont,
Delaware 19703.

2. I am the Manager of Delaware Valley Operations and an Account
Executive.

09/09/2005 15:18 GEM GROUP → 5711253

NO.363 0003

3. I am the Account Executive in charge of the Plumbers & Pipefitters Local Union No. 74 Pension Plan ("Pension Plan") and the Plumbers & Pipefitters Local Union No. 74 Welfare Plan ("Welfare Plan") accounts at GEMGroup (collectively the "Funds") and have been since 1990.

4. There are no other Plans that are named as defendants in this case in existence relating to the Plumbers & Pipefitters Local Union No. 74 and none of the other alleged plans listed in the Complaint filed by Mrs. Toy actually exist. Any benefits Mrs. Toy is entitled to would be provided by the Pension Plan and/or Welfare Plan.

5. Each of the Funds is a Taft-Hartley multi-employer plan that was established pursuant to the Collective Bargaining Agreement between the Plumbers & Pipefitters Local Union No. 74 ("Union") and the Delaware Mechanical Contractors Association ("Association"). Participation in the Funds is limited to those individuals who are members of the Union in Delaware and otherwise qualify for participation.

6. The Joint Board of Trustees of the Funds ("Trustees") are appointed by the Union and the Association, each of whom appoint an equal number of representatives to serve as trustees. The Trustees are the plan sponsors of both the Pension Plan and Welfare Plan.

7. The Trustees are: John J. Czerwinski, Andrew S. Nowell, Anthony M. Papili, Kyle T. Spence, John D. Daniello, George Millar, Terrence M. Shannon, and Jeffrey A. Sill. All of the Trustees are residents of Delaware.

8. Effective January 1, 1985, the Trustees retained GEMGroup as the Fund Manager for the Funds. GEMGroup has acted as the Fund Manager continuously since 1985.

09/09/2005

15:18

GEM GROUP → 5711253

NO. 363 0004

9. GEMGroup has an office in Pittsburgh, Pennsylvania where GEMGroup maintains bank accounts in the name of the Funds at a bank chosen by GEMGroup. The bank accounts are maintained by GEMGroup and the Funds and Trustees have no immediate control over the bank accounts. These accounts facilitate GEMGroup's administration of the benefits checks. GEMGroup determines the amount of benefits for each beneficiary on a monthly basis and automatically replenishes the bank accounts with sufficient funds from an operating account and/or current receipts collection account in the name of the Funds, both with a Washington, DC address, and/or from investment custody accounts in the name of the Funds located in Ohio. Once a month, the Delaware office of GEMGroup issues a statement to the Funds and Trustees with an accounting of what benefits were paid to beneficiaries for that month. GEMGroup directly remits payments for these benefits on behalf of the Funds.

10. As Fund Manager, GEMGroup administers the Funds at its office in Claymont, Delaware. GEMGroup manages the business and day to day operations of the Funds in the Claymont, Delaware office.

11. The GEMGroup office in Claymont, Delaware is also the location of the physical records of the Funds.

12. The Funds are managed through regular bi-monthly meetings of the Trustees. All of the business of the Funds is conducted at these bi-monthly meetings of the Trustees including all decisions regarding the eligibility and qualification requirements of participants to receive Funds benefits, including all appeals to the Trustees regarding those decisions. These bi-monthly meetings are held in various locations in Delaware.

09/09/2005

15:18

GEM GROUP → 5711253

NO.363 0005

13. All decisions relating to benefits eligibility and, specifically, decisions relating to Russell Toy and Martha Toy were made exclusively in Delaware.

14. The Funds and the Trustees have retained a Pennsylvania law firm and one or more Delaware law firms to represent the Funds and Trustees. The law firms' attorneys provide advice with regard to benefits eligibility and attend the bi-monthly meetings in Delaware.

15. According to Pension Plan records, the breakdown of pensioners in the Pension Plan from 2000 to the present are as follows:

<u>Year</u>	<u>Total Pensioners</u>	<u>Pensioners with Pennsylvania Addresses</u>	<u>Total Amount Paid to All Pensioners</u>	<u>Total Amount Paid to Pensioners with Pennsylvania Addresses</u>
2000	376	11	\$6,265,646.00	\$188,825.19
2001	417	11	\$7,035,844.00	\$145,112.63
2002	459	9	\$8,061,903.00	\$137,764.22
2003	476	10	\$9,576,354.00	\$139,741.52
2004	484	11	\$9,779,575.00	\$146,060.65
2005	492	11	\$2,325,960.00	\$102,507.92

The information regarding pensioners with Pennsylvania addresses is based on the current address information provided to GEMGroup by the pensioner and the Pension Plan does not know whether such address is the residence address of the pensioner. The total amount paid to all pensioners in 2004 and 2005 is based on unaudited financial information.

16. According to Welfare Plan records, the breakdown of participants in the Welfare Plan from 2002 to the present are as follows:

09/09/2005

15:18

GEM GROUP → 5711253

NO. 363 0006

<u>Year</u>	<u>Total Participants</u>	<u>Participants with Pennsylvania Addresses</u>
2002	1422	34
2003	1020	38
2004	1204	45
2005	1011	41

The information is based on the current address information provided to GemGroup by the participant and the Welfare Plan does not know whether such address is the residence address of the participant. The total number of participants for 2004 and 2005 is based on unaudited information.

17. None of the participants of the Pension Plan or Welfare Plan reporting a Pennsylvania address are involved or related to this litigation.

18. Neither the Welfare Plan nor the Pension Plan has negotiated contracts with any health care providers in Pennsylvania. Since 2001, the Welfare Plan has had a contract with BlueCross BlueShield of Delaware to provide medical benefits to participants of the Welfare Plan. GEMGroup also provides for minimal health care benefits covered under the Welfare Plan. The negotiations between the Welfare Plan and BlueCross BlueShield of Delaware and GEMGroup occurred in Delaware. Similarly, the Welfare Plan has a contract with Express Scripts to provide prescription coverage under the Welfare Plan. Express Scripts is based in St. Louis, Missouri. The negotiations between the Welfare Plan and Express Scripts occurred in Delaware.

19. The Welfare Fund does not pay any health care providers directly. All payments made to health care providers for claims covered by the Welfare Plan are

09/09/2005

15:18

GEM GROUP → 5711253

NO. 363 0007

paid by directly by BlueCross BlueShield of Delaware, Express Scripts, and/or GEMGroup.

20. Russell B. Toy ("Mr. Toy"), deceased, was a member of the Union and a participant of the Pension Plan. Mr. Toy would have been eligible for pension benefits upon normal retirement. Prior to retirement, Mr. Toy applied for disability pension benefits. Mr. Toy did not conform to Pension Plan requirements and was considered not eligible for disability pension benefits. Upon further consideration, the Trustees made a decision to award Mr. Toy disability pension benefits. These benefits were awarded posthumously and were paid to Mrs. Toy retroactively from the date of Mr. Toy's claimed disability until his death. All such benefits were paid to Mrs. Toy at 1222 Slaughter Station Road, Hartly, Delaware 19953.

21. Martha J. Toy ("Mrs. Toy"), Mr. Toy's widow, currently receives survivor's benefits, in the amount of fifty percent (50%) of Mr. Toy's awarded monthly disability pension benefits, from the Pension Plan which are sent to Mrs. Toy at 1222 Slaughter Station Road, Hartly, Delaware 19953. The fifty percent (50%) survivor benefit has been paid to Mrs. Toy retroactively from the date of Mr. Toy's death.

22. Mr. Toy, while he was eligible for welfare benefits through the Welfare Plan for a time during his membership in the Union, was no longer a participant in the Welfare Plan, had not been a Welfare Plan participant for many years, did not conform with the Welfare Plan eligibility rules and was therefore not eligible for any welfare benefits.

23. The decisions to deny the Toys' application for additional pension benefits under the Pension Fund, survivor benefits under the Pension Fund, medical

09/09/2005

15:18

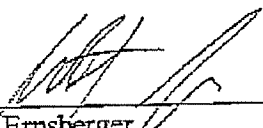
GEM GROUP → 5711253

NO.363 0008

benefits under the Welfare Fund, and life insurance benefits under the Welfare Fund were made by the Trustees at meetings that occurred exclusively in Delaware.

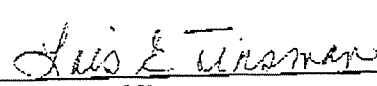
24. During all relevant times Mr. and Mrs. Toy reported a Delaware address to the Funds and Mrs. Toy continues to report a Delaware address to the Funds.

25. This Affidavit is based on my personal knowledge and/or information contained in the records of the Funds that are maintained by GEM Group and are available for my review as the Account Executive.



Scott A. Ernsberger

SWORN TO AND SUBSCRIBED before me, this 9th day of September, 2005.



Notary Public

My Commission Expires: Oct 18, 2007

LOIS E. TINSMAN
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires Oct. 18, 2007